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RE NG LEE ENG; EX PARTE CSPM SDN BHD

HIGH COURT MALAYA, GEORGETOWN
AZIZAN MD ARSHAD J
[BANKRUPTCY NO: PA-29NCC-517-12-2022]
2 DECEMBER 2025

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Abstract – *(i) According to the stipulations of s. 5(1)(c) of the Insolvency Act 1967, it is obligatory for the creditor's petition to be submitted within a period of six months from the commencement of the act of bankruptcy. Courts have no jurisdiction to allow an extension without special circumstances; (ii) The filing of a bankruptcy notice and creditor's petition are two different bankruptcy proceedings and have different implementation timelines. Thus, even when the creditor's petition has expired, the decision to strike out the bankruptcy notice is not automatic.*

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BANKRUPTCY: *Creditor's petition – Extension of time – Application for – Whether obligatory for creditor's petition to be submitted within period of six months from commencement of act of bankruptcy – Whether court may exercise discretionary powers to extend and/or abridge time for filing of creditor's petition after last date to file lapsed – Insolvency Act 1967, ss. 5(1)(c) & 93(4)*

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BANKRUPTCY: *Bankruptcy notice – Amendment – Application for – Extension of time for creditor's petition denied – Whether court could automatically cancel bankruptcy notice – Whether decision to strike out bankruptcy notice premature – Whether filing of bankruptcy notice and creditor's petition two different bankruptcy proceedings with different implementation timelines*

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This was an appeal by the judgment creditor ('JC') against the decision of the Senior Assistant Registrar ('SAR') which dismissed the application for amendment of bankruptcy notice ('BN') and extension of time to file the creditor's petition ('CP'). The revised notice of application in encl. 114 addressed the proposed amendments, *inter alia*, (i) leave to amend the BN (encl. 2); and (ii) that the JC be given six months from the date of the order applied for to file the CP. The primary concern was whether the court had the power to extend the six month period stipulated under s. 5(1)(c) of the Insolvency Act 1967 ('IA') after it had expired. The JC's arguments were (i) the delay in filing the CP was not deliberate but due to pending appellate proceedings; (ii) it was inappropriate to continue bankruptcy steps while appeals were still pending, as any further action might have been stayed; (iii) that the six month limitation under s. 5(1)(c) of the IA should not be construed rigidly. The provision, according to the JC, was procedural in nature, and the court retained residual power to extend time in order to prevent injustice; (iv) the JC emphasised that the JD had continuously

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resisted enforcement through a series of interlocutory and appellate proceedings. It would be inequitable, therefore, for the JD to now rely on statutory technicalities to defeat the judgment debt; (v) no prejudice would be caused to the JD if time were extended, as the JD had long been aware of the enforcement process and the debt remained outstanding; and (vi) the court was equally empowered under the insolvency rules to extend time under special circumstances. On the JD's part, the summary of the argument revolved around the following: (i) the application was defective, irregular and time-barred; (ii) s. 5(1)(c) of the IA was mandatory and jurisdictional in nature. It required the CP to be filed within six months from the act of bankruptcy; (iii) the act of bankruptcy had occurred, either on 3 March 2023 or, at the latest, 9 May 2024, when the stay order pending appeal to the Court of Appeal ('COA') ended. Even reckoning from the latter date, the six-month period expired on 8 November 2024, whereas the JC filed the application on 13 December 2024; and (iv) bankruptcy proceedings have *quasi*-penal consequences and therefore demanded strict compliance. Equitable considerations could not override statutory provisions, and this court lacked the inherent power to extend or enlarge time under the IA.

Held (allowing appeal in part):

(1a) According to the stipulations of s. 5(1)(c) of the IA, it is obligatory for the CP to be submitted within a period of six months from the commencement of the act of bankruptcy. It was evident herein that there was no exceptional justification based on the affidavit of the JC and the submissions of the JC. The JC had taken a risk by not filing the CP as soon as the stay order had been stopped after the decision was made by the COA. (paras 26-28)

(1b) The JC failed to promptly file a stay order or submit the CP following the COA decision. The JC's assertion that the JD was to blame for filing the application in the Federal Court was both baseless and misdirected because the six months period to file the CP was within the JC's control. If an extension of time was to be allowed, the sword of Damocles would continue to hang over the head of the JD. (para 38)

(2) The JD's actions in this matter did not constitute an abuse of the court process, as the challenge to the bankruptcy petition or proceeding was permitted under the IA. The act of appealing this case to COA and the Federal Court was a privilege of JD, which he had utilised in accordance with legal provisions. Furthermore, the JD possessed the authority to assert that the deadline for submitting the CP had been adhered to within the designated timeframe. Should the JC fail to comply, this right would be contested, and JD retained the right to challenge it, thereby reinforcing his position. (paras 30-32)

(3) The JC should not be permitted to file a CP in premises after the six-month statutory time period specified in s. 5(1)(c) of the IA had passed. This was due to the fact that the JD's bankruptcy was under s. 3(1)(i) of the IA, hence it could not be claimed that the bankruptcy took place within the six-month period under s. 5(1)(c) of the IA. Thus, whether this court may exercise its discretionary powers under s. 93(4) of the IA to extend and/or abridge the time for filing of CP after the last date to file CP had lapsed and/or after the six months statutory time limit under s. 5(1)(c) of the IA had lapsed, specifically, the response to this was negative. (paras 39 & 43)

(4) The amendments sought to the BN were typographical errors. Moreover, the amendment sought was not prejudicial nor a disadvantage to the JD as it reduced the debt due and not increase it. When the application for amendment to the BN was dismissed, then, in terms of law, the original BN still existed and was valid. The court could not automatically cancel the BN because the application for extension of the CP had been filed. The filing of the BN and the CP were two different bankruptcy proceedings and also had different implementation timelines. The decision to strike out the BN was reinstated. The parties must proceed to comply with current rules and regulations. Thus, the SAR's decision to strike out the BN was set aside and the BN was to be reinstated while the SAR's decision to dismiss the extension of the CP was affirmed. (paras 53-59)

Case(s) referred to:

Aras Jalinan Sdn Bhd v. Tipco Asphalt Public Co Ltd & Ors [2011] 8 CLJ 830 CA ***(refd)***

Berkenaan: Ahmed Ismail Hj Amin v. Ex-parte: Lembaga Kumpulan Wang Simpanan Pekerja [2022] CLJU 1196; [2022] 1 LNS 1196 HC ***(refd)***

Mui Bank Bhd v. Raju [1990] CLJU 132; [1990] 1 LNS 132 HC ***(dist)***

Ng Yen Kok v. AmFinance Bhd [2013] CLJU 366; [2013] 1 LNS 366 CA ***(refd)***

Re A Debtor (No 10 of 1953), Ex Parte The Debtor v. Ampthill Rural District Council And Another [1953] 2 All ER 561 ***(refd)***

Re Abdul Ghafur Maidi; Ex Parte BSN Commercial Bank (Malaysia) Bhd [2011] MLJU 1141 HC ***(refd)***

Re Choong Hin Seong; Ex: P CIMB Bank Bhd [2024] 7 CLJ 624 HC ***(dist)***

Re Malaya Sibuku; Ex Parte; Kaya Karisma Sdn Bhd [2022] CLJU 2424; [2022] 1 LNS 2424 HC ***(dist)***

Re Sulaiman Sahari; Ex-Parte: Hafitz Khalid & Anor [2019] CLJU 1138; [2019] 1 LNS 1138 HC ***(refd)***

Re Tunku Maryam Tunku Zainal Abidin; Ex P Arab Malaysian Finance Bhd [2007] 8 CLJ 626 HC ***(refd)***

Tuan Ahmed Abdul Rahman v. Arab-Malaysian Finance Bhd [1996] 1 CLJ 241 FC ***(refd)***

Westech Sdn Bhd v. Thong Weng Lock [2017] 8 CLJ 257 FC ***(refd)***

Yap Heng Cheong v. Citibank Bhd [1999] 4 CLJ 365 HC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 97(2)
Insolvency Act 1967, ss. 3(1)(i), 5(1)(c), 93(4)(ii)
Insolvency Rules 2017, r. 283

For the judgment creditor - Lim Tow Gim; M/s TG Lim & Ranjeet
For the judgment debtor - Balwant Singh Purba; M/s Balwant Singh & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Azizan Md Arshad J:

Introduction

[1] This is an appeal by the judgment creditor (JC) against the decision of the Senior Assistant Registrar (SAR) on 23 July 2025 which dismissed the application for the amendment of bankruptcy and the extension of time to file the creditor's petition.

[2] On 5 November 2025, this court dismissed JC's appeal with RM5,000 in costs after hearing the parties' appeals and affirming the learned SAR's decision, which has laid this appeal before the COA at present. The parties in this judgment will be referred to as they were in the High Court.

Issue

[3] There are two main issues that have been argued by the parties during the appeal stage, namely:

(i) first issue:

  (a) whether the amendment to BN should be allowed?;

(ii) second issue:

  (a) whether the amendment to BN should be allowed and encl. 2 should be automatically struck out?

Background Facts

[4] The revised notice of application (re-dated 14 March 2025) in encl. 114 addresses three proposed amendments, which are as follows:

(i) leave to amend the bankruptcy notice ("BN") dated 1 December 2022 (encl. 2);

(ii) that the JC be given six months from the date of the order applied for to file the bankruptcy petition ("CP"); and

(iii) costs in the cause.

A **Arguments Of The Parties**

Second Issue

[5] The primary concern is the second issue, which will subsequently impact the first issue. Therefore, this court will address the second issue B (before the first issue) in its decision, which is:

> Whether the Court has power to extend the six-month period stipulated under Section 5(1)(c) of the Insolvency Act 1967 after it has expired?

Summary Of JC's Arguments

C **[6]** The JC's principal argument is that the delay in filing the creditor's petition was not deliberate but due to pending appellate proceedings.

[7] This court reiterates part of JC's argument. The JC submits that:

(i) it was inappropriate to continue bankruptcy steps while appeals were still pending, as any further action might have been stayed; D

(ii) that the six-month limitation under s. 5(1)(c) of the Insolvency Act 1967 should not be construed rigidly. The provision, according to the JC, is procedural in nature, and the court retains residual power to extend time in order to prevent injustice;

E (iii) the JC emphasises that the JD has, since 2001, continuously resisted enforcement through a series of interlocutory and appellate proceedings. It would be inequitable, therefore, for the JD to now rely on statutory technicalities to defeat the judgment debt;

(iv) no prejudice would be caused to the JD if time were extended, as the F JD has long been aware of the enforcement process and the debt remains outstanding;

(v) from the chronology of events, it is easily seen that the extension application (encl. 114) was not due to mismanagement, oversight or holding back the lodgement as a means of holding the JD to ransom G or such like;

(vi) enclosure 114 was filed on 13 December 2024. That was only three weeks from the decision on encl. 38 in dismissing the JD's appeal;

(vii) the court is empowered to extend time after its expiration (refer to H s. 93(4) of the Insolvency Act 1967); and

(viii) the court is equally empowered under the Insolvency Rules to extend time under special circumstances. As the six months having lapsed because of the hearing of other matters, there would be great injustice to the JC if he cannot refile the CP, hence it was a special I circumstance. The court therefore permitted the extension of time to file the CP.

Summary Of JD's Arguments

[8] On JD's part, the summary of the argument revolves around the following:

(i) the application is defective, irregular and time-barred;

(ii) section 5(1)(c) of the Insolvency Act 1967 is mandatory; and jurisdictional in nature. It requires the creditor's petition to be filed within six months from the act of bankruptcy. Once the period lapses, the right to present the petition is extinguished, and the court has no jurisdiction to revive or extend it;

(iii) the act of bankruptcy has occurred, either on 3 March 2023 or, at the latest, 9 May 2024 when the stay order pending appeal to the Court of Appeal (COA) ended. Even reckoning from the latter date, the six-month period had expired on 8 November 2024, whereas the JC filed the application under encl. 77 on 13 December 2024; and

(iv) bankruptcy proceedings have *quasi*-penal consequences and therefore demand strict compliance. Equitable considerations cannot override statutory provisions, and this court lacks inherent power to extend or enlarge time under the Insolvency Act 1967.

Analysis And Findings

[9] It is trite law that, when an appeal against the decision of the learned SAR is brought before the judge in chambers, the matter will be heard afresh, as though the matter comes before the judge for the first time.

[10] This principle has been established by the Federal Court in the case of *Tuan Ahmed Abdul Rahman v. Arab-Malaysian Finance Bhd* [1996] 1 CLJ 241. The principle that has been decided in the abovementioned case has been followed by the High Court in the case of *Re: Sulaiman Sahari; Ex-Parte: Hafitz Khalid & Anor* [2019] CLJU 1138; [2019] 1 LNS 1138, where the court held as follows:

> [10] Firstly, an appeal to the Judge in Chambers from a discretionary order of the SAR is treated as if the matter comes before the Judge for the first time. In *Seloga Jaya Sdn. Bhd. v. Pembinaan Keng Ting (Sabah) Sdn Bhd* [1994] 2 CLJ 716, the Supreme Court cited with approval the decision of Lord Atkin in *Evans v. Bartlam* [1937] AC 473 as follows:-
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> > (1) In an appeal from a discretionary order of the master to a Judge in Chambers, the Judge exercises his own discretion as though the matter comes before him for the first time, unfettered by the previous exercise of the master's discretion; and
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> > (2) So far as the master's decision is concerned, the Judge will give it the weight it deserves.

A (See *Berkenaan: Ahmed Ismail Hj Amin v. Ex-parte: Lembaga Kumpulan Wang Simpanan Pekerja* [2022] CLJU 1196; [2022] 1 LNS 1196; [2022] MLJU 129).

[11] In the brief grounds dated 7 October 2025, learned SAR has referenced s. 5(1)(c) of the Insolvency Act 1967, which stipulates that the prescribed B six-month period is mandatory. Section 5(1) of the Insolvency Act 1967 states as follows:

> Section 5. Conditions on which creditor may petition
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> (1) A creditor shall not be entitled to present a bankruptcy petition against C a debtor unless -
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> (a) the debt owed by the debtor to the petitioning creditor, or if two or more creditors join in the petition the aggregate amount of debts owed to the several petitioning creditors, amounts to one hundred thousand ringgit;
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> D (b) the debt is a liquidated sum payable either immediately or at some certain future time;
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> (c) **the act of bankruptcy on which the petition is grounded has occurred within six months before the presentation of the petition;** (emphasis added)

E **[12]** The learned SAR decides that the language is imperative and does not confer discretion upon the court to extend the time and based on the affidavit of service ("encl. 13"), the BN was personally served to the JD on 24 February 2023. The JC's calculation on the date of the act of bankruptcy occurred on 3 March 2023.

F **[13]** The learned SAR indeed provided, granting the benefit of the doubt to JC by considering that the act of bankruptcy took place on 8 March 2023 (seven working days following the service), and being fully cognisant of the stay order issued by the High Court on 18 April 2023, which mandated a stay of execution of the judgment dated 26 November 2001 pending appeal to the G COA.

[14] The appeal at the COA was subsequently resolved on 9 May 2024. Consequently, the six-month period following the act of bankruptcy dated on 8 March 2023 (according to the court's calculation) should recommence after the disposal of the stay order on 9 May 2024.

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[15] Thus, based on the court's calculation, the creditor's petition must be filed on or before 1 October 2024. Besides, the court has also taken into consideration all the possible and/or suggested the calculation for the act of bankruptcy date as brought up by both JC and JD and had found that the I six-month period to file the CP had lapsed.

[16] The learned SAR states that even if the act of bankruptcy is counted after the decision on the notice of appeal to judge in chambers under encl. 38 given on 18 November 2024, the six-month period lapsed on 17 May 2025. The JC has until the date of the decision for encl. 114 made on 23 July 2025 to file the CP but only filed an application for an extension of time.

[17] This court concurs with the position asserted by the learned SAR that, according to the stipulations of s. 5(1)(c) of the Insolvency Act 1967, it is obligatory for the CP to be filed within a period of six months from the commencement of the act of bankruptcy.

[18] This court refers to the case of *Westech Sdn Bhd v. Thong Weng Lock* [2017] 8 CLJ 257; [2017] 5 MLJ 368, held that:

> [2] Under s. 3(1)(i) of the Bankruptcy Act 1967 ('the BA'), an act of bankruptcy is committed upon the expiry of seven days from the date of service of the BN. In this case, on the premise that no legal impediment exists, the act of bankruptcy begins from 1 November 2011. **Any creditor's petition ('CP') to be filed, must be done within six months of the latter date (s. 5(1)(c) of the BA).** (emphasis added)

[19] As to the argument that the JD caused the delay through his appeals (which the court finds that it may be factually correct) however, the law prescribes a clear time-frame within which a JC must act. The learned SAR states that:

> 22. As to the argument that the JD caused the delay through his appeals (which the Court finds that it may be factually correct) however, the law prescribes a clear time frame within which a JC must act. *The JC could have filed the petition within time and sought a stay pending appeals. However, the JC has also failed to apply for stay application pending the disposal of NOATJIC under Enclosure 38. The choice not to do so cannot now be remedied by equitable pleas.*
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> 23. The Court is mindful that bankruptcy proceedings have serious and *quasi* penal implications. Statutory compliance is therefore not a mere formality but a jurisdictional requirement. *Once the six-month period under section 5(1)(c) has expired, the act of bankruptcy ceases to subsist, and the petition founded upon it cannot proceed.* (emphasis added)

[20] The JC has referred to the case of *Re: Choong Hin Seong; Ex: P CIMB Bank Bhd* [2024] 7 CLJ 624; [2024] MLRHU 983, where this court allowed the extension of time to file the bankruptcy petition after six months.

[21] This court takes note that under s. 93(4) of the Insolvency Act 1967 in relation to the court's power to extend the bankruptcy proceeding, states as follows:

> Section 93. Discretionary powers of the court
>
> (1) Subject to this Act and to general rules, the costs of and incidental to any proceeding in court shall be in the discretion of the court.

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(2) ...

(3) ...

(4) *Where by this Act or by general rules the time for doing any act or thing is limited, the court may extend the time, either before or after the expiration thereof, upon such terms, if any, as to the court seems fit.* (emphasis added)

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[22] In *Choong*'s case (*supra*), this court has referred to the case of *Yap Heng Cheong v. Citibank Bhd* [1999] 4 CLJ 365, where Abdull Hamid Embong J, decided that:

> The power to extend time derived under this primary legislation, it seems to me, is unconstrained, not even when the time is limited by any rules. As such, if there arises any conflict in the exercise of this discretion under s. 93(4) of the Act, with any of its rules, this power will, in my view, and following the decision in *Wee Chow Yong t/a Vienna Music Center v. Public Finance Bhd* [1990] 1 CLJ 176; [1989] 3 MLJ 509, override any time constraint under the rules.

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[23] In our case, the JC submits that this court should be minded that the following factors may be considered in allowing the extension of time:

(a) the length of the delay;

(b) the reasons for the delay;

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(c) the chances of the appeal succeeding; and

(d) the degree of prejudice to the would-be respondent if the application was granted ... .

[24] Under s. 93(4) Insolvency Act 1967, the court has a discretion to extend the time where time has been provided for doing an act, as the court deems fit. Under r. 283 of the Insolvency Rules 2017 also states that the court may under special circumstances and for good cause shown, extend or abridge the time appointed by these rules or fixed by any order of the court for doing any act or taking any proceedings.

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[25] With all due respect to learned counsel for the JC, in that case, this court handled such a situation because in that case the fact involved the striking out of a CP that had been filed within six months, while in the current case, no CP was filed within six months. This can be seen when this court in the *Choong*'s case (*supra*) ruled as follows:

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> [37] In our case, CP must be filed within 6 months from the date of the act of bankruptcy begins. During the pendency of the hearing of this appeal, the proceedings for the adjudication order (AO) and receiving order (RO) have been adjourned pending this appeal. During that time, the CP had already been filed within 6 months. When this Court struck out the CP, of course the 6 months expired. Therefore, if the extension is not given to JC to file CP, it will prejudice JC's right. *This Court is of the opinion that the situation would be different if CP was not filed by JC at all during that 6 months.* (emphasis added)

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[26] This court concurs with the finding of the learned SAR that, according to the stipulations of s. 5(1)(c) of the Insolvency Act, it is obligatory for the CP to be submitted within a period of six months from the commencement of the act of bankruptcy.

[27] However, in any circumstance, considering the particulars of the case, it is evident that there is no exceptional justification based on the affidavit of the JC and the submissions of the JC, which explicitly state as follows:

> 63. *When the Court of Appeal disposed off Encl. 305, the AOB had to relate back to the date the Registrar disposed of Encls. 10 (and 12). It is only when the Registrar has heard and determined the application/s to set aside the BN and dismissed it that an AOB is committed. This is on 31.07.2023.*
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> 63. The lodgement deadline to file the bankruptcy petition expired on 31.01.2024. At that time the stay order was still in place and bound the JC. It was not possible for the JC to action the filing of the bankruptcy petition before 31.01.2024 as that would render it to a potential contempt action or proceeding by the JD or even the Court itself.
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> 64. *When the stay order expired on 09.05.2024, there were still 2 hearings to be disposed off which were 4 and 2 months apart respectively. It was not practical nor reasonable to sought leave to file the bankruptcy petition as soon as 09.05.2024 passed. It was highly unlikely that the Court would entertain the leave application at that stage seeing the NOM was a decision on the underpinning legitimacy of the leave order of 19.07.2022.* Also this Court had not disposed of the JD's appeal against the Registrar's decision on the summons in chambers to strike out the BN.
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> 65. As soon as this Court disposed of the JD's appeal against the striking out of the BN, the JC lodged the application (Encl. 114) within 3 weeks for leave amongst others to extend time to file the bankruptcy petition. There was no undue delay by the JC in taking out Encl. 114.
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> 66. To permit the JD to contend that it is mandatory that the JC lodge the bankruptcy petition in such bizarre circumstances, that is, in 6 months from the AOB would be enabling the JD to use Section 5(1)(c) IA to perpetrate fraud on the JC. *After all, the appeal to the Court of Appeal, the application for leave to appeal to the Federal Court and the appeal to strike out the BN was the JD's doing alone and no other.*
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> 67. As it was the JD's doing alone in appealing against appealing it would be unconscionable for him to raise the window of time in *Section 5(1)(c) IA to prevent the JC from pursuing the bankruptcy proceedings as not a cent of the judgment was paid to the JC by the JD. He must therefore be estopped from pursuing such inequitable and unconscionable conduct.*
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> 68. In addition to that said above that the JD is estopped from pursuing such inequitable line of defence, the delay caused with the day after the Registrar heard Encl. 10 to the hearing at the Court of Appeal, the hearing of the NOM and the appeal against Encl. 10 must also be taken out of the computation of the 6 months window of time to file the bankruptcy

A petition from the AOB that took place on 31.07.2023. Since time cannot be turned back, the 6 in addition to that said above that the JD is estopped from pursuing such inequitable line of defence, *the delay caused with the day after the Registrar heard Encl. 10 to the hearing at the Court of Appeal, the hearing of the NOM and the appeal against Encl. 10 must also be taken out of the computation of the 6 months window of time to file the bankruptcy petition* B *from the AOB that took place on 31.07.2023. Since time cannot be turned back, the 6 months window of time should be given from the day Enclosure 114 is granted.* (emphasis added)

[28] It is clear that JC has taken a risk by not filing the JC as soon as the stay order has been stopped after the decision was made by the COA. JC's C argument that there is an application to the Court of Appeal is without merit. This is because the JD did not apply for any stay order against the COA order. JD has also made the argument that "this is not a special reason for the extension of time to be granted".

[29] This issue was answered correctly by the learned SAR when she ruled D that:

21. As to the argument that the JD caused the delay through his appeals (which the Court finds that it may be factually correct) however, the law prescribes a clear time frame within which a JC must act. *The JC could have filed the petition within time and sought a stay pending appeals. However, the JC* E *has also failed to apply for stay application pending the disposal of NOATJIC under Enclosure 38. The choice not to do so cannot now be remedied by equitable pleas.* (emphasis added)

[30] Other concerns, such as the "abuse of court process" raised by the parties, have also been considered. The determination of whether the JD's F actions constitute an abuse of the court's process must be evaluated based on the specifics of the case. This guidance was provided in the case of *Re Tunku Maryam Tunku Zainal Abidin; Ex-parte: Arab Malaysian Finance Bhd* [2007] 8 CLJ 626, where it was concluded that:

Regrettably, even in Bankruptcy cases, I have observed the not G uncommon ploy of JDs to grossly delay court proceedings, by making all sorts of applications for striking out, *etc*. at the BN stage, as well later, at the CP stage of the proceedings and then to appeal to the judge in chambers, the Court of Appeal and even to the Federal Courts coupled with an application for stay of the Petition. In the result, it sometimes takes a JC eight to fifteen years to recover the judgment debt or to secure H a truly final adjudication and receiving order. Just take this case as an example. The JC first obtained judgment on 1st June 1995 before the SAR, which was confirmed by the judge in chambers and the Court of Appeal – without further appeal by the JD. Until now, about 11 years later, the JC has yet to recover the fruits of litigation and the JD is still trying to 'go behind the judgment'. When it dawned on her counsel that she I was about to fail on this score her counsel adopted the 'other sufficient cause' argument to support her contention that "the existence of a valid

judgment does not *ipso facto* warrant an Adjudication and Receiving Order." And, now that she has appealed against my decision confirming the AORO, a few years may yet have to be added to the eleven years delay that the JC has had to endure to recover the judgment debt.

[31] However, this court believes that the JD's actions in this matter do not constitute an abuse of the court's process, as the challenge to the bankruptcy petition or proceeding is permitted under the Insolvency Act 1967. The act of appealing this case to COA and the Federal Court is a privilege of the JD, which he has utilised in accordance with legal provisions.

[32] Furthermore, JD possesses the authority to assert that the deadline for submitting the CP has been adhered to within the designated timeframe. Should JC fail to comply, this right will be contested, and JD retains the right to challenge it, thereby reinforcing his position.

[33] The court has likewise examined the authorities presented by the JC in backing this appeal. The JC has referred to several cases where the court has granted an extension of time for filing cause papers in civil proceedings, namely BN.

[34] In the case of *Mui Bank Bhd v. Raju* [1990] CLJU 132; [1990] 1 LNS 132; [1990] 4 MLRH 613, the excerpt of this case is seen in Her Ladyship Justice Siti Norma Yaacob's (as she then was), the JC has quoted part of the decision of the court:

Penghutang telah mempertikaikan perintah melanjutkan masa oleh kerana pada 1 Mac 1990, notis kebankrapan telah pun luput. Ini memang benar tetapi faktor ini tidak menjejas bidang kuasa mahkamah untuk membenarkan permohonan melanjutkan masa oleh kerana s. 93(4) Akta Kebankrapan 1967 telah memperuntukkan bahawa di mana dalam Akta tersebut atau pun dalam kaedah-kaedahnya masa untuk melakukan sesuatu dihadkan, mahkamah mempunyai budibicara, sebelum atau selepas luputnya masa berkenaan, untuk melanjutkan masa. *Oleh kerana mahkamah mempunyai kuasa untuk membenarkan permohonan pemiutang untuk melanjutkan masa pada 1 Mac 1990, saya berpendapat bantahan penghutang atas perkara ini adalah tidak munasabah.* (emphasis added)

[35] Observing the case's facts reveals why the court ruled as it did. In that case, the court found that it involved "BN's extension of time which had already been filed within the permitted time period" and the application being filed now was for "an extension of time", as such the court was not able to accept the judgment debtor's contention that the bankruptcy notice cannot be extended past three months of its date of issue.

[36] The JD has also referred to the case of *Re: Malaya Sibuku; Ex Parte Kaya Karisma Sdn Bhd* [2022] CLJU 2424; [2022] 1 LNS 2424; [2022] MLJU 2534, which has decided as follows:

A [1] This is an application by the Judgment Debtor (the JD) for *an extension of time to file the JD's Notice of Appeal (Encl. 61) against the learned Senior Assistant Registrar's decision dated 26.10.2021 granting the Bankruptcy Order against the JD.* (emphasis added)

[37] Again, the facts of the case are different as it involves an application B for an extension of time to file an appeal to the judge in chambers. In that case, the High Court has relied on cases that clearly constitute factors for extending the time to file an appeal, namely, this is not an issue in our current case.

[38] The JD's arguments have likewise "dragged" the court into the role C of the "scapegoat" for the CP filing delay. The JD should not hold the court responsible for the delay in addressing the JD's appeal, which has resulted in the expiration of the six-month period to submit the CP. This situation arises from the JC's own failure to promptly file a stay order or submit the CP following the Court of Appeal's decision. Furthermore, the JC's assertion D that the JD is to blame for filing the application in the Federal Court is both baseless and misdirected because the six months period to file CP is within the JC's control. If an extension of time was to be allowed, the sword of Damocles would continue to hang over the head of the judgment debtor (see: *Re Abdul Ghafur Maidi; Ex parte BSN Commercial Bank (Malaysia) Bhd* [2011] MLJU 1141). E

[39] The court concludes that the JC should not be permitted to file a CP in premises after the six-month statutory time period specified in s. 5(1)(c) Insolvency Act 1967 has passed. This is due to the fact that the JD's bankruptcy under s. 3(1)(i) of the Insolvency Act 1967, hence it cannot be F claimed that the bankruptcy took place within the six-month period under s. 5(1)(c) of the Insolvency Act 1967.

[40] Furthermore, the phrase "shall not be permitted to present a bankruptcy petition" is extremely explicit and unambiguous. Additionally, the word "shall", as used in s. 5(1) of the Insolvency Act 1967, implies that G the JC must abide by the above-mentioned rule. In addition, it is evident from reading ss. 5(1) and 5(7) of the Insolvency Act 1967, this court may dismiss the CP even if it is filed later if the JC fails to adhere to any of the conditions outlined in s. 5 of the Insolvency Act 1967.

[41] The Federal Court in *Westech Sdn Bhd* (*supra*) went on to cite *Ng Yen* H *Kok v. AmFinance Bhd* [2013] CLJU 366; [2013] 1 LNS 366, asserting that *Ng Yen Kok*'s case upholds the English ruling in *Re A Debtor (No 10 of 1953), Ex Parte The Debtor v. Ampthill Rural District Council And Another* [1953] 2 All ER 561, and that it is an established law that the JC must lodge or file the CP within the timeframe specified by the statutory provision.

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[42] This court also notes that the JD did not request a stay of execution during the leave stage at the FC because, when granting leave to appeal to the FC, s. 97(2) of the Courts of Judicature Act (CJA) gives the FC the authority to issue a stay of execution of any COA order that is being appealed against; therefore, the stay order lapsed. The JC did not take any action to recover the debts owed, unless there is another order that prohibits the action to file a CP. A six-month term commenced on 9 April 2024, if the action is taken from the date of the COA's ruling.

[43] In the end, a single reply matters for the question ahead:

> Whether this Court may exercise its discretionary powers under Section 93(4) and Rule 283 of the Insolvency Act 1967 to extend and/or abridge the time for filing of CP after the last date to file CP has lapsed and/or after the six months statutory time limit under Section 5(1)(c) of the Insolvency Act 1967 has lapsed?, specifically, the response is negative.

[44] For the reasons outlined, this court believes that there is no necessity to intervene regarding this second issue, that this court has no jurisdiction to extend the six-month period under s. 5(1)(c) of the Insolvency Act 1967; therefore, the decision of learned SAR is upheld and affirmed.

[45] The court will now address the first issue, which is:

> Whether the amendment to BN should be allowed and Enclosure 2 should be struck out?

Summary Of JC's Arguments

[46] The gist of the JC's case for para. (a) above of encl. 114 is that the amendments sought to the BN were typographical errors. During the hearing of encls. 10 and 12 the JD had been put on notice that the court required the JC to amend the BN.

[47] Moreover, the amendment sought is not prejudicial nor a disadvantage to the JD as it reduces the debt due and not increase it. The principal sum is RM1,506,000 and it was mistakenly typed as RM1,560,000.

[48] There is no detriment or prejudice to the JD as the interest was calculated on the correct principal sum. When the interest and the correct principal sum are added up the total sum claimed is correct. It is for the proposed revised sum of RM2,228,880.

[49] Essentially it is to synchronise the correct principal sum with the correct total amount of the interest with the final total of the two sums above. A wrong sum in the BN does not invalidate it under s. 3(2)(ii) of the Insolvency Act 1967.

[50] As mentioned earlier, the striking out of the BN on 23 July 2025 was an ancillary or collateral order made with respect encl. 114. There is nothing stopping this court from addressing this issue in this appeal.

[51] After all the JD had not filed any application with an enclosure number asking for the BN to be struck out. It was merely a verbal request after the learned SAR dismissed encl. 114.

Summary Of JD's Arguments

[52] The JD argued, when CP cannot be extended, then BN should also be struck out because no further enforcement can be made and it becomes academic and the learned SAR her reasons, she said that "since the application under encl. 114 dismissed, the BN under encl. 2 is strike out".

Analysis And Findings

[53] When the application for amendment to the BN is dismissed, then, in terms of law, the original BN still exists and is valid. The court cannot automatically cancel the BN (encl. 2) because the application for extension of the CP has been filed. This is because the filing of the BN and the CP are two different bankruptcy proceedings and also have different implementation timelines.

[54] For the total claims made during the BN's withdrawal, if there is an error, it will not affect BN because it can still be amended during the CP hearing later.

[55] Ultimately, for the second issue:

> "Whether the amendment to BN should be allowed and encl. 2 should be automatically struck out?" The court's answer is that it cannot be automatically struck out even if the CP has been denied an extension of time.

[56] Due to the fact that the CP extension application was dismissed by the learned SAR during submissions rather than by a written application from the JD (confirmed by parties), the appeal against the amendment to the BN in this case was not decided on its merits by this court. The JD and the learned SAR both agreed that it had turned academic. Since SAR had not yet rendered a ruling on the merits of the aforementioned amendment application, this court did not yet reach any conclusions regarding the BN amendment.

[57] However, even though the CP had expired, the decision to strike out the BN (encl. 2) was premature because it was not automatic. Enclosure 2 is reinstated for these reasons, and the parties must proceed to comply with current rules and regulations. SAR ought to make decisions on other enclosure-related issues that remain to be decided based on their merits (to be heard before the learned SAR of the High Court of Penang on its merits (without limiting each party's rights to bring up any issues with regard to BN's integrity).

[58] This situation has been decided in the case of *Aras Jalinan Sdn Bhd v. Tipco Asphalt Public Co Ltd & Ors* [2011] 8 CLJ 830; [2012] 1 MLJ 510, held:

> [14] We are unanimous that the High Court had erred in not considering the petitioner's application to amend the petition as set out in the proposed draft amended petition underlined in red. *The judicial commissioner had dismissed the said application to amend only by reason of the fact that she had decided to strike out the petition under the O. 18 r. 19 applications made by the respondents.* (emphasis added)

Conclusion

[59] The appeal is allowed in part with the following orders:

(i) the SAR's decision to strike out BN is set aside and BN (encl. 2) is to be re-instated;

(ii) the SAR's decision to dismiss the extension of CP is affirmed; and

(iii) no order as to costs.